

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

Nico Coty Toscani,)	Civil Action No.: 8:12-3244-MGL
)	
Plaintiff,)	
)	
vs.)	ORDER AND OPINION
)	
Dr. Paul C. Drago; Dr. John B. Mcree;)	
Dr. John B. Tomarchio; Warden Willie)	
Eagleton; Major West; RN Linda C.)	
Tyler; Nurse Krystal S. Hill; RN Kelly M.)	
Morton; HCA Amy L. Smith; RN)	
Patricia D. Perry; CCC Michele D. Fox;)	
RN Lisa Neely; Sgt. Gaddy,)	
)	
Defendants.)	
)	

Plaintiff Nico Coty Toscani ("Plaintiff") is an inmate in custody at the Lee Correctional Institution in Bishopville, South Carolina. On November 16, 2012, Plaintiff proceeding *pro se*, filed this civil rights action pursuant to 42 U.S.C. § 1983. (ECF No. 1.) In accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B0(2)(d) D.S.C., this matter was referred to United States Magistrate Judge Jacquelyn D. Austin for pretrial handling.

Plaintiff filed a motion to voluntarily withdraw Defendant Dr. John B. Tomarchio on February 5, 2013. (ECF No. 28.) The Defendants did not file a response. Thus, Magistrate Judge Austin recommended that Plaintiff's motion to withdraw Dr. John B. Tomarchio be granted. (ECF No. 33.)

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this Court. See *Mathews v. Weber*, 423 U.S. 261, 270-71

(1976). The Court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. 28 U.S.C. § 636(b)(1). The Court may also receive further evidence or recommit the matter to the Magistrate Judge with instructions. *Id.* The Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objections are made.

After a careful review of the record, the applicable law, and the Report and Recommendation, the Court finds the Magistrate Judge's recommendation to be proper. Accordingly, the Report and Recommendation is incorporated herein by reference and this Court GRANTS Plaintiff's Motion to withdraw Dr. John B. Tomarchio (ECF No. 28).

IT IS SO ORDERED.

s/Mary G. Lewis
United States District Judge

Spartanburg, South Carolina
March 4, 2013